

**Briefing for the EU-Moldova Human Rights Dialogue****Issue: Impunity against torture and the activity of the Consultative Council for the Prevention of Torture****Submitted by:** Legal Resources Centre<sup>1</sup>**Date:** 20 April 2012**Summary**

The Government of Moldova failed to investigate timely and properly the ill-treatment cases related to April 2009 events and many other subsequent cases. The sanctions imposed by courts remain to be very mild, while the investigation and examination of the ill-treatment charges in court is very lengthy.

In 2009, 2010 and 2011 the situation regarding torture and ill-treatment did not improve substantially, despite numerous efforts by the international community to support the Consultative Council for the Prevention of Torture (further CC). Although the Parliament approved the new composition of the CC for the Prevention of Torture in July 2011, its members continue to face significant impediments in carrying out their mandate – i.e. reports on monitoring visits are not published by the ombudsman, police continues to create obstacles during monitoring visits, lack of technical support.

**Background****1. Impunity**

In 2011 prosecutors received 958 complaints on ill-treatment. The number of received complaints is 15% higher than in 2010.<sup>2</sup> The number of complaints in 2011 is very close to the number of complaints received in 2009 (992), when ill-treatment has been largely applied to persons arrested after April 2009 protests. The number of the received complaints suggests that the ill-treatment by the police is still a frequent phenomenon in Moldova. It may also suggest that the awareness about the existing mechanism within the prosecution office, as well as the confidence in its functionality, is higher than previously.

In 2011, out of 958 complaints, the prosecution service initiated 108 criminal investigations concerning ill-treatment, which means less than 12% of the received complaints. In 2010, 131 criminal investigations have been initiated, that is 22% more than in 2011. Without opening a criminal investigation it is impossible to gather valid evidence for trial. In 2010 the European Court for Human Rights (ECtHR) found that investigation of ill-treatment complaints in Moldova without formal opening a criminal investigation cannot be deemed as an efficient investigation.<sup>3</sup> Despite the clear ECtHR ruling, the above statistics

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<sup>1</sup> The Legal Resources Centre is a registered public association that seeks to contribute to raising the awareness of the authorities about and to the eradication of human rights problems; strengthening an efficient, transparent, fair and credible judiciary; creating a culture of respect for human rights; developing public policies on observance of human rights. The LRC current main activities are focused on the implementation of human rights treaties and reforms in the justice sector. Further information will be available on [www.crim.org](http://www.crim.org) (the website is under construction and will be launched in May 2012).

<sup>2</sup> The statistical data from this section is taken from the information letter of the Anti-torture Unit of the General Prosecution Office no. 8-16d/12-376, of April 3, 2012, addressed to the Consultative Council for the Prevention of Torture.

<sup>3</sup> See *Matasaru and Savitchi v. Moldova*, judgment of 2 November 2010

confirm that the prosecutors are still reluctant to investigate properly complaints of ill-treatment and do not open a criminal investigation on each complaint. Hence one can conclude that no substantial changes in the investigation of ill-treatment occurred since 2009.

In 2011, the prosecution service submitted to trial courts 36 cases concerning ill-treatment. Other 92 investigations have been discontinued. On 1 January 2012, 92 criminal investigations concerning ill-treatment were pending investigation. Out of the opened investigations, in 2011 only 28% have been submitted to trial court. More than 70% of the opened investigations have been discontinued by the prosecutors. These numbers support the belief of the civil society that many meritorious cases are never submitted to the court.

The qualification of ill-treatment as abuse of power (art. 328 of the Criminal Code) and not as torture (art. 309<sup>1</sup> of the Criminal Code) has been interpreted in 2009 by the ECtHR as not securing adequate deterrent effect of the criminal law.<sup>4</sup> However, the practice of the prosecution service did not change after the ECtHR ruling. Thus, in 2011 the majority of ill-treatment cases (587 out of 958, or 61%) have been qualified by prosecutors as abuse of power. Only 30% of complaints (295) have been qualified as torture.

The prosecutors and courts are not treating the ill-treatment cases with priority. While the prompt investigation of the ill-treatment complaints is of a paramount importance for an effective investigation, the cases are pending investigation for years. Out of 108 criminal investigations opened in 2011, 92 were still at the investigation stage on 31 December 2011. The majority of the cases submitted to trial court in 2009 or 2010 are still pending before the first instance court or on appeal. In 2009-2011 the prosecution submitted to trial courts 137 cases concerning the ill-treatment. In 2011 the courts delivered judgments only on 43 of these cases. Such delays are not common for the Moldovan legal system. We believe that some prosecutors and judges protracted the examination of these cases waiting for the resolution of the political crisis in the country. This questions the judicial and prosecutorial independence in Moldova.

The failure to suspend the police officers pending investigation is also a problem. Virtually all the police officers suspended after April 2009 have been reinstated by court orders. Some judges noted in their judgments that the suspension is a very harsh measure, because the police officers do not receive their salaries for the period of suspension. The Criminal Procedure Code should have been amended to clarify the status of suspended persons in terms of remuneration, but it has not yet been done.

In 2011 the Moldovan courts delivered 43 judgments on ill-treatment charges. These cases concerned 63 accused persons. 42 of these persons have been acquitted and 21 convicted. The acquittal rate in these cases (63%) is particularly high, bearing in mind the average acquittal rate in Moldova of 2.5%. This data suggest that the criminal investigations into the allegations of ill-treatment were very poor. On the other hand, the sanctions imposed by the courts for ill-treatment are very lenient. Out of 21 persons sentenced for ill-treatment, only one has been imprisoned. The others have been sentenced to suspended imprisonment or fine.

The above shortcomings are still in place despite the extensive training provided to the majority of Moldovan judges and many Moldovan prosecutors in 2010 and 2011 by the Council of Europe.

As concerns April 2009 events, by 17 April 2012, 58 criminal cases concerning ill-treatment have been submitted with the trial court, 19 police officers were acquitted<sup>5</sup> and 7 were convicted. The court decisions are not final yet. On the other hand, apparently, the prosecution never investigated whether the ill-treatment in police commissariats has been ordered by superiors. Therefore, no senior police officer was charged for the mass ill-treatment in the Chisinau police commissariats.

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<sup>4</sup> See *Valeriu and Nicolae Rosca v. Moldova*, judgment of 20 October 2009

<sup>5</sup> Amnesty International, *Unfinished business – combating torture and ill-treatment in Moldova*, 2012, p.7

On 6 December 2011 a judgement was issued by the ECtHR in the case of *Taraburca v. Moldova* (Application no. nr. 18919/10) concerning April 2009 events. The Court found a violation of Article 3 ECHR in both substantive and procedural limb. In March 2012 the ECHR decided to communicate other two applications related to April 2009 events - *Craciuneac v. Moldova* (Application no. 77407/11) and *Radu v. Moldova* (Application no. 24129/11).

Between November 2011 and March 2012 a representative group of governmental and non-governmental institutions developed proposals to amend the Criminal Code, in order to insure the proper incrimination and sanctioning of torture and ill treatment, based on European and United Nations' standards and fulfil the recommendations of the international institutions.<sup>6</sup> The initiative seeks to exclude the qualification of torture as abuse of power and non-privative sanctions for ill-treatment. This proposal has been submitted to the Ministry of Justice in March 2012. Apparently, no step has been taken yet by the Ministry of Justice to initiate the legislative procedure.

## **2. Activity of the Consultative Council for the Prevention of Torture<sup>7</sup>**

Lack of knowledge about Council's mandate: During several monitoring visits in places of detention,<sup>8</sup> police officers limited the access of the members of the Consultative Council (CC) to the cells, to the requested registers/records and the usage of the needed equipment (e.g. photo camera). During one visit, one of the CC members was required to wait for more than 45 minutes to find that an arrested person was held inside of the General Police Commissariat in Chisinau and was not registered as being in the Commissariat. These incidents are not singular.

Infringement in Council's mandate: The web page dedicated to the CC<sup>9</sup> has no relevant information on the monitoring visits and does not provide relevant information on the experience of the CC members and their contact information.

The Ombudsman (the director of the Human Rights Centre and chairman of the CC) failed to make public the reports on monitoring of places of detention and the reactions of the state bodies to the monitoring visits. The monitoring reports developed by the civil society representatives of the CC are not published and the reactions of the public authorities to those reports are not communicated to the authors of the reports. The placement of the report on the web page dedicated for the CC activities have to be approved by the ombudsman, who usually does not approve and hence the reports are not published on the website, although required by law.

The lack of prompt responses by ombudsman to discovered violations by the Consultative Council:

To date the ombudsman did not react in any manner to the following human rights violations established during the monitoring visits:

- (i) illegal detention of Eugen Fiodoruc in the Republican Psychiatric Hospital<sup>10</sup>. The case was made public on 16 March 2012 by Amnesty International,<sup>11</sup>

<sup>6</sup> See also: Moldova: Police torture and ill-treatment: "It's just normal." (2007) <http://bit.ly/HQrzWs>; Moldova: Police torture and other ill-treatment: It's still 'just normal' in Moldova (2009) - <http://bit.ly/l4qTtY>; Entrenching Impunity. Moldova's response to the police violence during the April 2009 post-election demonstrations - <http://bit.ly/HSlyIG>; Strategy For Justice Sector Reform 2011-2015 - <http://bit.ly/J9TKKJ>; Report. Human Rights in Moldova 2009 – 2010 (see pag. – 385 - 393) - <http://bit.ly/HLHzDB>.

<sup>7</sup> The Republic of Moldova has ratified OPCAT on 30 March 2006; it entered into force on 24 July 2006. The obligations deriving from OPCAT have been domestically implemented in July 2007. The Consultative Council shall provide advice and assistance to the ombudsmen in the exercise of their competences as a national mechanism of prevention of torture.

<sup>8</sup> E.g. Visit from 23.01.2012 at the General Police Commissariat, Chisinau; Visit from 24.02.2012 at Centru district Police Commissariat, Chisinau; Visit from 07.03.2012 at Hincesti Police Commissariat – undertaken by Ion Guzun, member of the CC.

<sup>9</sup> <http://ombudsman.md/md/consiliul/>

(ii) inhuman and degrading conditions in detention within District Police Commissariat of Hincesti. Each cell of the IDP (Temporary detention isolator) has a container with faeces and another with urine. The temperature in some of cells is cold - less than 17<sup>0</sup>C (visit on 07 March 2012).

(iii) Lack of reaction by police officers from District Police Commissariat of Hincesti to the paramedic's recommendations concerning a detainee of 61 years. Namely, the paramedic (feldsher) indicated in the medical documentation that the detainee status of health was "Grave".

Lack financial, technical and logistical support for the Consultative Council: The CC is still facing lack of sufficient financial resources<sup>12</sup> and administrative support team. The members of the CC are not paid for their work, are imposed *de facto* to use their own mobile phones for the visits, they do not receive any assistance from the Ombudsman Office in liaising or communicating with the complainants and are in impossibility to involve experts/specialists in monitoring of places of detentions. Thus, the representatives of civil society or human rights NGOs are reluctant to become members of the Consultative Council and some of the members have doubts they will continue to work in such conditions.

The support team employed by the ombudsmen (including for investigation of torture allegations) are fully dependant on Ombudsman's orders and instructions. The Ombudsman Office staff from regional offices does not share with CC members the received complaints or calls (including via the hot line) on the allegations of torture or ill-treatment.

**Recommendations for the Government:**

- to amend the Criminal and Criminal Procedure Codes, in order to insure the proper incrimination and sanctioning of ill-treatment;
- to ensure a prompt and effective examination of the ill-treatment cases by the prosecutors and judges;
- to provide additional training for judges and prosecutors about combating ill-treatment;
- to change the relevant legal provisions, so that to provide that suspension of police officers and other officials suspected of having committed torture or other ill-treatment crimes applies *de jure* immediately when allegations have been formulated and ensure that the suspended officials receive a part or full salary during suspension;
- to strengthen the collaboration between the Ombudsman and the members of the CC from the civil society;
- to urge the Ombudsman office and the CC to ensure maximum transparency of their work, as required by law;
- to strengthen the administrative autonomy of the CC;
- to allocate sufficient funding for the CC to carry out effectively its mission.

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<sup>10</sup> Eugen Fiodoruc's lawyer, Roman Chizilov presented the judgement issued by the investigative judge Garri Bivol from Centru District Court of Chisinau of 13 July 2011 allowed, ordering the forced hospitalization in a psychiatric institution for 60 day. To date, Eugen Fiodoruc is still detained without the extension of his detention.

<sup>11</sup> <http://bit.ly/l3bJ4C>;

<sup>12</sup> § 74 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to the Republic of Moldova - <http://bit.ly/lZYrl2>.